IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.32521-M of 2006

Date of Decision: December 15, 2006

Smt.Surinder Kaur and another

...Petitioners

VERSUS

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.J.S.Chahal, Advocate,
for the petitioners.

Mr.M.C.Berry, Sr.DAG, Punjab,
for the State.

Mr.Harit Sharma, Advocate.

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The petitioners have filed this petition for quashing of FIR No.73 dated 21.5.2004 registered against them under Sections 420,406,467,468 and 471 IPC at Police Station, Mandi Gobindgarh, District Fatehgarh.

The petitioners, who are partners of M/s Badinpur Rice & General Mills, village Badinpur, District Fetehgarh Sahib (hereinafter called the `Mill') are made answerable for shortage of rice, which was supplied to them by MARKFED, being the partners of the Mill, leading to registration of the FIR, afore-mentioned. Petitioner No.1, claiming herself to be an illiterate Pardah

Nashin lady, has sought quashing of this FIR on the ground that she is not conversant with the running of the business and the intricacies of the law and was inducted as a partner only on account of death of her late husband Kulwant Singh. Petitioner No.2, stated to be a minor, aged about sixteen years, entitled to 16% of the net profit with no liability, has prayed for quashing of this FIR against him on that count. Reference has also been made to clause 15 of the partnership deed to say that Surinder Kaur, petitioner No.1, cannot be held liable for any criminal proceedings due to default in compliance of any laws/enactments etc. Relying upon the provisions of Section 30 of the Indian Partnership Act, 1932 (hereinafter called the `Act'), it is submitted that minor cannot be personally held liable for any act, though minor's share may be so held liable.

This FIR is registered at the instance of Manager, MARKFED, Khanna with the allegations that the Mill has mis-appropriated paddy to the tune of Rs.1,04,12,780/-. As per allegations, MARKFED entrusted 167027 bags of paddy weighing 58459-45 quintals of fine variety of paddy to the Mill for the crop 2003-2004 for the purposes of shelling. The Mill was required to deliver rice to the tune of 39167-83 quintals, but delivered only 29935-50 quintals of rice to FCI in the accounts of MARKFED. Thus, rice weighing 9233-33 quintals was mis-appropriated by the Mill. Not only that, it is further alleged that the Mill had delivered incomplete documents of 36 wagons, which contained the acknowledgments and weight check memos dated 5.4.2004, 6.4.2004, 7.4.2004 and 8.4.2004, but the acceptance notes regarding the said wagons were not submitted. As per the allegations, on verification from the FCI,

these documents were found to be bogus. Accordingly, the present FIR is lodged and the proceedings are in progress against the present petitioners besides other accused. Relying on the judgment of Kailash Verma Vs. Punjab State Civil Supplies Corporation and another, 2005(1) RCR (Criminal) 727 it is submitted that where there is an arbitration agreement and proceedings under arbitration have been resorted to, then offence under Section 406 IPC cannot be alleged and proceeded against.

The facts in the present case are entirely distinguishable from the case of Kailash Verma (supra). There are specific allegations in the present FIR for having submitted forged documents to claim that the rice had been delivered in the accounts of MARKFED, whereas no such allegations had been made in the case of Kailash Verma (supra). Otherwise also, the case of Kailash Verma has been explained in number of decisions by this Court by referring to the case of Trisuns Chemical Industry v. Rajesh Agarwal and others, JT 1999 (6) S.C.618. In this case, the allegation of the complainant was that the Director-respondent had approached the appellant -Company for supply 5450 metric tones of “Toasted Soyabean Extractions” for a price of nearly four and a half crores of rupees. The appellant Company paid the amount through cheques. The commodity, which was supplied, was found to be most inferior and sub-standard quality. The complainant had suffered a loss of Rs.17 lacs from this consignment. After obtaining report in regard to the inferior quality of the consignment, the complaint was filed for initiating the criminal prosecution against the accused. The High Court had quashed this complaint on the ground that the dispute is

purely of a civil nature and hence no prosecution should have been permitted. The same was taken in appeal before the Hon'ble Supreme Court. Noticing the judgment in the cases of State of Haryana v. Bhajan Lal, JT 1990 (4) SC 650 and Rajesh Bajaj v. State NCT of Delhi JT 1999 (2) SC 112, the Hon'ble Supreme Court observed that “time and again this Court has been pointing out that quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions.” In the case of Rajesh Bajaj (supra), the Hon'ble Supreme Court had observed that “merely because an act has a civil profile is not sufficient to denude it of its criminal outfit.” It would be a benefit to quote observations of Hon'ble Supreme Court in this regard:-

> “It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.”

In Trisuns Chemical Industry'case (supra), the Hon'ble Supreme Court specifically dealt with the filing of a criminal complaint in cases where there is an arbitration clause. In this regard, the Hon'ble Supreme Court observed as under:-

> “We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence Arbitration is a remedy for affording reliefs to the party

affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in **Bhajan Lal v. State of Haryana (**Supra)."

Accordingly, the prayer for quashing of the FIR on the basis of law laid down in Kailash Verma's case (supra) apparently is not made out in the present case.

To be fair to the counsel for the petitioners, he has submitted that in view of the provisions of Section 30 of the Act, petitioner No.2 cannot be held liable for any criminal liability. Section 30 of the Act has been partly reproduced in the petition. Admittedly, Section 30 of the Act is not making any provision regulating the criminal liability on a partner, who is a minor. This section only talks about induction of a minor as a partner and how it is to be done or his share in the partnership is to be regulated. It is in this context, Section 30(3) of the Act provides that such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act. Under the Partnership Act, a minor cannot be a full partner liable to share its losses. He can only be admitted to the profit of partnership. Thus, he is entitled to share in the profits and not losses.

This provision is made governing these aspects of the partnership apparently would not cover the criminal liability that a partner may incur, though minor. Similarly the status of petitioner No.1, being an illiterate Pardah Nashin lady and not responsible for the running of the business, would be a special fact, required to be proved before a court of law. This cannot be assumed to direct quashing of the FIR registered against her. So would be the position in regard to the criminal liability of the minor. The criminal law recognises no liability in terms of Section 82 of the IPC depending upon the age of a child under the age of seven years and liability in respect of a child above the age of seven years and under twelve years is regulated depending upon the sufficient majority of understanding to judge the nature and consequences of his conduct in terms of Section 83 IPC. All these aspects are required to be gone into by the trial Court and cannot be so determined while exercising jurisdiction under Section 482 Cr.P.C.

Accordingly, I am not inclined to interfere in this case and would dismiss the present petition with liberty to the petitioners to raise all these pleas before the trial Court.

With these observations, the present petition is dismissed.

December 15, 2006 (RANJIT SINGH)
ramesh JUDGE